

# CMI NEWS LETTER

*Vigilandum est semper; multae insidiae sunt bonis.*

COMITE MARITIME INTERNATIONAL

NO. 3 -OCTOBER / DECEMBER 2011

## News from the CMI

- The CMI Beijing Conference
- Minutes of the Executive Council meeting held on Sunday 25 September 2011 at the offices of Nordisk Defence Club, Kristinelundveien 22, Oslo
- Minutes of the CMI Assembly held on Tuesday 27 September 2011 at the offices of the Norwegian Shipowners Association, Rådhusgaten 25, Oslo

## News from the National Associations

- News from the Belgian Maritime Law Association

## News from Intergovernmental and International Organizations

### News from IOPC Fund

- Report of the meetings of governing bodies, 24-28 October 2011, by Richard Shaw

## Uniformity in maritime law – Developments

- Trans-boundary oil pollution damage arising from exploration and exploitation of off-shore oil. Do we need an international compensation convention?, by Richard Shaw

## NEWS FROM THE CMI

### THE BEIJING CONFERENCE AND SHANGHAI ADD-ON

Please be reminded that the 40th CMI Conference will take place in Beijing, P.R.C. from October 15-19, 2012, with an optional Add-On Programme of an educational and social character in Shanghai from October 20-22, 2012. Distinguished speakers from around the World will focus on contemporary and important issues of maritime law. An exciting social programme is being arranged by the China Maritime Law Association, including a visit to the Great Wall of China and the Ming Tombs. You will also marvel at the Forbidden City, Tian'anmen Square and the Summer Palace. Fabulous Pre and Post Conference Tours are also being arranged. Further details may be arranged by visiting the Conference website (which is currently under construction) at [www.cmi2012beijing.org](http://www.cmi2012beijing.org). The Conference Hotel will be the Beijing Kempinski Hotel, 50 Liangmaqiao Road, Chaoyang District, Beijing 100125, P.R.C.

Details of the substantive programme and optional hotels in Beijing, and the programme in Shanghai along with suggested hotels in that city will be promulgated in the near future.

**MINUTES OF THE EXECUTIVE COUNCIL MEETING HELD ON  
SUNDAY 25 SEPTEMBER 2011 AT THE OFFICES OF NORDISK DEFENCE CLUB,  
KRISTINELUNDVEIEN 22, OSLO**

Participating:

<i>President:</i>	Karl-Johan GOMBRII
<i>Vice President:</i>	Stuart HETHERINGTON
<i>Immediate Past President:</i>	Jean-Serge ROHART
<i>Councillors:</i>	Giorgio BERLINGIERI Christopher DAVIS Måns JACOBSSON Sergej LEBEDEV Dihuang SONG Andrew TAYLOR
<i>Secretary General:</i>	Nigel FRAWLEY
<i>Administrator:</i>	Wim FRANSEN
<i>Treasurer:</i>	Benoit GOEMANS
<i>Publication Editor:</i>	Francesco BERLINGIERI

*Apologies:*

Joanne Gauthier, José Tomás Guzman and Louis Mbanefo

*Opening remarks of the President*

The President opened the meeting by saying that he had met with the MLA of the United States in New York for their Spring Meeting during the week of 2 May 2011 and found the substantive events and social programme of a very high calibre. He asked Christopher Davis to express his gratitude to their Board of Directors for their many kindnesses.

The President then referred to the topics discussed at the CMI Management Committee Meeting in London on 10 May 2011 and thanked Andrew Taylor again for making the arrangements at the offices of Reed Smith.

The President said that in the month of June he had attended at the CMI Secretariat in Antwerp to meet with Wim Fransen and Benoit Goemans (Pascale Sterckx being on vacation) to discuss administrative matters.

He then proceeded to the Agenda.

1. The Minutes of the Executive Council Meeting held by e-mail conference during the week commencing 4 April 2011 were approved.

2. There was no business arising from the minutes.

3. The President referred to the Memorandum on the meeting of the Management Committee held in London on 10 May 2011, which was included in the

agenda documentation, and invited comments on its provisions as the meeting progressed, as the agendas for the Executive Council and the management Committee coincided.

4. *Finances*

a) *Treasurer's report on the accounts*

The Treasurer referred to his report and presentation of accounts for the 31 December 2010 year-end which was already approved by the Executive Council at its virtual meeting during the week of 4 April 2011.

b) *Budget and 2012 subscription levels*

The Treasurer then turned to the budget for 2012 and noted that it had been decided at the virtual meeting in April to recommend "Oslo Budget 3" to the Assembly on 27 September 2011 to the effect that the amount of the subscriptions for 2012 were fixed by referring to the 2009 Rotterdam Schedule and reducing the figures for subscriptions 2012 by a 40% reduction and a 10% early bird discount. This was re-approved by the Executive Council, noting that subscriptions for 2013 need to be closer or equivalent to the Rotterdam Schedule.

c) *Unpaid subscriptions*

A list of unpaid subscriptions and of settlements was tabled by the Treasurer and Mr Davis. After discussion, the following was decided or noted, as the case may be:

- (i) Mr Lebedev reported that it follows from the information received from the MLA of the Russian Federation that all outstanding are intended to be paid by 1 October 2012.
- (ii) Titulary Member fees having been reduced to zero since 2010, all outstanding older Titulary Member fees are to be written off.
- (iii) Debts of expelled associations or associations that no longer exist are to be written off.
- (iv) Amounts of outstanding subscriptions, which can be considered de minimis and which may have arisen because of currency adjustments or the like, or which are covered by duly approved agreements with defaulting member associations are written off.
- (v) The MLA of China encountered some difficulties, of a clerical nature, but obstacles should be removed shortly.
- (vi) The MLA of Turkey has asked to pay their outstanding by way of credit card. The Executive Council said that this would be acceptable provided they pay the 2.5% charge card commission.
- (vii) The outstanding of the MLA of Peru should be settled shortly as per agreement reached. In that context it was noted that the Rotterdam Schedule of Subscriptions was in need of fine tuning and it was decided to submit a proposal in that regard to the Assembly in Beijing in 2012.
- (viii) Giorgio Berlingieri was asked to investigate the status of the MLA of Morocco, there having been no contact with the Association since its President passed away last year.

*d) Charitable Trust*

The Executive Council took note of the Charitable Trust's report to the Assembly and upon receiving a request from Patrick Griggs, a decision was made for the CMI to pay, as from 2012, annual publishing costs of the CMI, previously paid by the Charitable Trust, in the amount of approximately GBP 7,000 per annum. The other major payment by the Charitable Trust has been in respect of IMLI travel expenses for CMI lecturers in the range of GBP 5,000 per annum.

*e) Use of reserve funds*

Messrs Jacobsson, Taylor and Hetherington all sounded a note of caution in taking the reserve funds to below EUR 500,000.

Dihuang Song, with the backing of Christopher Davis, suggested that post graduate students be engaged to research, partly funded by the CMI and supervised by an International Working Group set up by the CMI, how the organisation arrives at its decisions when drafting conventions, such as the Rotterdam Rules. The President asked them to circulate a note on the subject with a recommendation.

The President and Stuart Hetherington suggested that the CMI invest further in the CMI website for video lectures by John Hare, Michael Sturley, Martin

Davies etc. This was agreed. A decision was thereupon taken to also use reserve funds to improve the website.

There was then agreement that if we have a Singapore representative office we should use the reserve funds to prepare CMI brochures.

Mr Lebedev suggested that Executive Council members visit NMLAs whenever they have an opportunity to ascertain their problems and give advice. Any shortfall on travelling expenses could be paid by the reserve funds. The President said that such travel expenses are being paid from time to time, it being a long standing policy of the ExCo to engage more in the activities of the member associations.

*5. Members*

*a) Nominations for Titulary Membership*

The Executive Council unanimously endorsed P. Jeremy Bolger of the MLA of Canada and Guy van Doosselaere of the MLA of Belgium as Titulary Members for discussion at the Assembly.

*b) New NMLAs and current prospects*

The President and Giorgio Berlingieri reported and the Executive Council decided as follows:

- (i) The Executive Council will recommend to the Assembly that the applications of the MLAs of Israel and Portugal to rejoin the CMI be accepted at EUR 500 per annum for the next two years after which this will be reviewed.
- (ii) The Executive Council took note of the fact that the MLA of Indonesia is almost ready for membership in the CMI. They must first of all confirm that they are broadening their own membership.
- (iii) Interested persons in India, the United Arab Emirates, Malaysia, Poland, Honduras, Ukraine and Egypt are not yet ready to form broadly-based MLAs, but the signs of their achieving this and joining the CMI in the future are encouraging.
- (iv) The question of the MLA of the Netherlands Antilles also came up for discussion as that country no longer exists since 10 October 2010. The MLA still exists but is in arrears with its subscriptions and they seek guidance. After discussion the Executive Council asked Mr Goemans to liaise with the President of the MLA of the Netherlands Antilles about a solution to these problems.

*c) Provisional members*

As nothing has been heard from Mr Ogola in Kenya and Mr Isaki Mbamvu in the Democratic Republic of Congo about applying for CMI membership in recent years, their status as provisional members should be reviewed by the Assembly.

Norman Martinez, the provisional member from Honduras, continues to diligently seek sufficient support in his country to apply for CMI membership.

*d) Continued consultation process*

Christopher Davis reported that we had received 17 replies to the second questionnaire on NMLA's but more are required before decisions can be taken. He noted that the Canadian Maritime Law Association and the British Maritime Law Association were amongst those that had not yet replied. Nigel Frawley and Andrew Taylor undertook to hasten replies from their respective MLA's. Mr Davis filed a draft summary of the 17 replies which will form part of his report to the Assembly.

*6. Nominations*

Måns Jacobsson has completed one term on the Executive Council and is eligible for a second term, for which he has been nominated by the Nomination Committee. The Committee has also nominated Jorge Radovich of Argentina as the successor of José Tomás Guzman who is not eligible for re-election since his second term has now expired. The nominations were endorsed by the Executive Council. The President thanked both Mr Jacobsson and Mr Guzman, absent because of an arbitration hearing, for their valuable services and emphasized the importance of Mr Guzman's contributions during his two terms in order to promote the interests in the CMI in Latin America.

*7. Work in progress*

*a)* The Committee charged with studying the General Average interest rate for the forthcoming year has recommended 3%. Following discussion, the Executive Council approved this rate and recommended that it be put before the Assembly for their consideration. If approved, this will be posted on the website and in the next CMI News Letter.

*b) Piracy*

There was a general discussion about this being a public law matter although NMLAs are anxious to be informed about the relevant issues. This will be discussed further at the Assembly. Dihuang Song suggested that we inform our membership on all of the issues on our website. The decision was made to ask Patrick Griggs if he is prepared to do a note on the piracy issues for the Executive Council's consideration and, once approved, be posted on the website. There was also discussion about a piracy seminar at the World Maritime University in Malmö, Sweden 17 – 19 October 2011. Mr Jacobsson said that he would attend. Mr Rohart then said that we should continue to press IMO to take into consideration the considerable work that had been done by the CMI, in particular through Frank Wiswall and Patrick Griggs on the subject of piracy and maritime acts of violence. It was resolved to maintain the International Working Group on Acts of Piracy and Maritime Violence and to keep the member associations informed on current issues.

*c) Fair treatment of seafarers*

Giorgio Berlingieri tabled a written report having discussed the matter with the Chair of the IWG, Olivia Murray. He said that the IMO Legal Committee at its 4-8 April 2011 meeting had prepared a draft resolution for the consideration of the November 2011 IMO Assembly urging States to comply with the restraints imposed by the IMO guidelines. Ms Murray will be uploading information and documents shortly on the CMI website to raise awareness of the group's mandate. She and the Working Group will consider future activities and the possibility of a brief to the Legal Committee meeting in April 2012. The Executive Council agreed with her view that Piracy should not be part of the IWG's mandate, and that her group should develop relations with other groups interested in Fair Treatment of Seafarers, such as Fair Trials International. The Executive Council also agreed with Giorgio Berlingieri's view that the IWG should regularly update their activities on the CMI website and request NMLAs to ensure that the IMO guidelines are known by the competent Judicial and Administrative Authorities in their countries.

*d) LLMC and Australian proposal at IMO to increase limits*

The President referred to a note from Patrick Griggs advising that Australia has moved the IMO to have the LLMC 1996 limits increased under the tacit amendment provision of Article 8 of the 1996 Protocol. That is apparently the extent of their ambition and there is no associated move to amend LLMC to require shipowners to insure up to the Article 6 limits. The issue will be on the agenda for the next IMO Legal Committee meeting in April 2012.

*e) Rotterdam Rules*

The Secretary General referred to Tomotaka Fujita's report on the IWG which noted that as of the present time, there are 24 Signatory States with Spain as the only country which has ratified the Rotterdam Rules. He noted that there had been a successful conference in Abu Dhabi this past year promoting the Rotterdam Rules, and that one is currently being planned for Tokyo 21-22 November 2011. Mr Frawley also reported on the vigorous debate on the LinkedIn social network about whether the Rotterdam Rules would be beneficial for South American countries.

*f) Salvage*

Mr Hetherington tabled a report on the meeting of the IWG in London on 13 May 2011. He pointed out that the aim is to prepare a document containing pros and cons of various proposals to send to NMLAs for discussion in March 2012 as a preparatory step to the Beijing Conference. There will be no presentation of papers at the Conference. Rather, there will be introductory reports on the different subjects to be discussed by the delegations and decisions would then be taken on each issue. The chief issue will be whether

the CMI should draft a Protocol amending the 1989 Convention or just present a report to the IMO of the work carried out by the CMI.

*Note*

At this point, the meeting was adjourned for luncheon and Henri Li joined the meeting to give his report on judicial sales of ships.

*g) Judicial sales of ships - problems of enforcement*  
Mr Li reported on the progress to date of the IWG including the preparation of a preliminary draft of an international instrument setting out the basic requirements for judicial sales and for the recognition of foreign judicial sales using the 1958 New York Convention on Recognition of Foreign Arbitral Awards as a model. The draft had been circulated to Titulary Members and NMLAs for comment with a request that NMLAs nominate delegates to attend the ISC meeting on the subject at Oslo on 27 September 2011. Several comments have been received. It is recognised that Civil Code countries might have difficulties with the present language of the draft.

*b) Implementation and Interpretation of International Conventions*

Francesco Berlingieri tabled a draft Note dated 22.09.2011 he had prepared explaining the issues of implementation and reservations and the suggestion of preparing guidelines on the information that States should provide to the Depository of a specific Convention at the time of its ratification or acceptance. He recommended a working group be established consisting of himself and Professor Antapassis with the mandate to consider the responses received and report to the Executive Council with recommendations on future actions to be taken. Following discussion, Mr Berlingieri's proposals were endorsed.

*Note*

A few days after the Executive Council meeting, Mr Berlingieri sent the President and Secretary General a draft message to Professor Antapassis and a new Note to NMLAs together with two specimens of Questionnaires seeking guidance on the wordings. The President duly gave guidance and Mr Berlingieri proceeded to carry out his proposals.

*i) Marine insurance*

The Secretary General spoke to Dieter Schwampe's report. The IWG is concentrating on Mandatory Insurance regulations in International Conventions at the present time. The Questionnaire sent out on 12 August 2010 only attracted 10 replies. The IWG is analysing those replies but needs more in order to draw proper conclusions. Executive Councillors were urged to send reminders to their respective MLAs.

*j) Cross border insolvencies*

Mr Davis reported that his international working group, comprising Sarah Derrington of Australia and William Sharpe of Canada, held its preliminary

meeting in Buenos Aires on 10 October 2010. They asked to be on the programme for the Beijing Conference as it remains a highly topical subject (e.g. Korea Line, Beluga Shipping). The IWG is finalising the Questionnaire and the Executive Council is recruiting civil law practitioners or academics to join it.

*k) Limitation of liability*

The Secretary General gave Gregory Timagenis' report. The ISC met in London 25 – 26 March 2010 and informally in Buenos Aires in October 2010 on which basis the rapporteur, Helen Noble of Ireland, has further edited the list of Questions and Issues relating to limitation of liability in maritime law, and updated Commentary relating to draft Procedural Rules. It was decided to ask Mr Timagenis to invite a further round of comments from those who have participated in the ISC and from NMLAs in order thereafter to complete the work on the list of Questions and Issues, as well as on the Commentary by 31 March 2012 and submit them to the Executive Council for decision at its virtual meeting commencing the week of 23 April 2012 on any further action.

*l) Ratification of the Conventions on Arrest (1999) and Liens and Mortgages (1993)*

Giorgio Berlingieri reported that even though the 1999 Arrest Convention is entering into force on 14 September 2011, it is still appropriate to investigate on why it and the 1993 Liens and Mortgages Convention enjoy so relatively little success. He has asked his IWG members, John Hare and Ignacio Arroyo, to assist him in preparing two Questionnaires for circulation to NMLAs.

*m) Arctic/Antarctic issues*

Mr Frawley said that he had attended a workshop in Fairbanks, Alaska in July 2011 where the main topic was future governance of the Central Arctic Ocean beyond National Jurisdiction. The discussions included climate change, marine biology and geology, a fisheries regime, the new Arctic Search And Rescue Agreement, the Arctic Council's "Arctic Marine Shipping Assessment", the United Nations Convention on the Law of the Sea, Defence and Security issues, the seabed, the proposed Polar Code, shipping in the Northern Sea Route and the North West Passage and future possibilities for commercial shipping through the central Arctic Ocean. At the workshop, he met with the CMI ad hoc working group to identify and recommend matters for further study by the CMI. The working group decided that they should recommend uncontroversial matters and only those that apply to both the Arctic Ocean and the Southern Ocean. The working group identified the Collision Regulations, 1972, Load Line Convention, International Convention of Standards of Training, Certification and Watchkeeping for Seafarers 1978, International Convention on Maritime Search and Rescue 1979 (NUUK Declaration 12 May 2011), Arctic Marine Oil Pollution Preparedness and

Response (NUUK Declaration 12 May 2011) and MARPOL 73/78. Short summaries giving an explanation of the work that could be done were tabled with Mr Frawley's report.

The Executive Council thanked the ad hoc Working Group for its work and approved study by an IWG on the subjects identified by them. The Executive Council approved formation of an IWG with broad representation and cautioned against duplication of effort where the IMO may already have started work on the subjects identified. Mr Rohart moved, seconded by the Secretary General, that the IWG also include in its mandate a review of private international law maritime conventions as to their applicability to the Polar regions. This was unanimously approved.

#### *8. Publications*

Francesco Berlingieri advised that he had published 400 copies of the Yearbook and that they had been distributed to NMLAs and the Executive Council. He said that in order to ensure the publication and distribution of the Yearbook by 15 July, the deadline for the next Yearbook is April 2012.

#### *9. Young members*

Andrew Taylor reported that there had been over 80 delegates at the Young Maritime Law Association ("YMLA") seminar in London 17 and 18 June 2011. YMLA, which is not a CMI organisation, is restricted to five countries. However, it is a forum in which involvement in the CMI can be encouraged. To maintain its intimate character, the maximum number imposed has been 15 from each country. The possibility of expanding the group was regularly considered. He said that he is working on a sub-committee to make the arrangements for the Beijing Conference. He hopes that Violeta Radovich of Argentina, Ioannis Timagenis of Greece and that a Chinese young member (still to be identified) will participate.

The main question is how to engage young members to get involved in the CMI. Mr Taylor suggested that we have Young Member sub-rapporteurs on international sub-committees. The Executive Council agreed with this concept and the principles discussed were thought to be appropriate.

#### *10. Report on publication of the Handbook of Maritime Conventions*

The President reported that the present plan is for CMI to publish a new edition of the Handbook in association with the IMLI's publishing arm, Mare Nostrum.

#### *11. CMI Representative Office in Singapore*

Lawrence Teh was invited to the Executive Council meeting so that he could give his report on the possibility of opening a Singapore representative office.

The President referred to the fact that the Singapore MLA had proposed the idea of having a representative office in Singapore. Mr Hetherington met with Nick Sansom and Lawrence Teh in May 2011 to discuss this. The President replied that the Executive Council is generally positive to the idea on a three year trial basis with someone like Mr Teh having observer status at ExCo meetings to be informed of current matters. The President also reported on the draft Heads of Agreement that had been sent to the MLA of Singapore for comment. Mr Teh then addressed the ExCo and stressed that a representative office should focus on Asia as a whole and not just South East Asia. He agreed with a three year trial period and suggested several ideas for the kind of office that would serve CMI's purposes. Caution was expressed in that regard by several Councillors against the operation becoming too large-scale. Mr Teh thereupon left the meeting with many thanks from the President for his helpful suggestions which would be taken under advisement. It was decided that the discussions with the MLA of Singapore should continue and that a mandate should be sought from the Assembly to establish a representative office in Singapore, provided the final arrangements are approved by the Executive Council.

#### *12. Oslo Seminar and Assembly*

The President reported that matters were well in hand for the Seminar at DNV's premises the following day. The seminar has been organised by the Norwegian Maritime Law Association in co-operation with the President and will feature regulatory challenges in the High North, the Polar Code negotiations, the Northern Sea Route as a viable commercial alternative, Technology Outlook 2020, shipping and the environment, and the maritime lawyer in a new future. The Assembly will be held at the offices of the Norwegian Shipowners' Association on the day after that.

#### *13. York Antwerp Rules 2004*

The President then reported that he and Bent Nielsen had earlier met with representatives of BIMCO to discuss the fact that YAR 2004 is not being used and whether a compromise can be found to rectify this. He noted that the main problem is that salvage was basically exempted from General Average by virtue of YAR 2004 and that BIMCO as a result had decided not to incorporate the new YAR 2004 in their charter parties and other standard documents.

#### *14. Conference at Beijing October 2012*

The Secretary General reported on the substantive and social programme arrangements to date. He said that he and the President would be meeting with Henry Li and Dihuang Song during the evening of 27 September to discuss further details. Mr Song then showed an impressive video of the China National

Convention Centre and answered questions about the availability of good hotels in that location and in the Tianamen Square location where other conference facilities might be available. The Secretary General said that he would report within the next few weeks on the arrangements to date. Mr Song expects that approximately 150 – 200 Chinese delegates would register. He said that the Organising Committee is hopeful that 400 – 500 delegates in all would register. He also thought that a registration fee in the range of EUR 800 – 1,000, as discussed, might be too high for some Chinese delegates but that perhaps local sponsors could subsidise them in that respect. He said that the Organising Committee would certainly arrange a lower registration fee for young members. They are open to having a special rate for the Rotterdam Rules' programme only.

#### 15. Other business

a) IMO Legal Committee Meeting April 2011 / IOPC Funds Meeting March 2011. The Secretary General said that Richard Shaw had attended both meetings as the CMI Observer and reported on same in the CMI Newsletter No. 1-2 January/August 2011.

#### b) Regulation of the offshore industry and transboundary spills

The Secretary General reported on behalf of Richard Shaw who he had heard from recently on his return from a meeting of the IMO Correspondents Group in Bali on transboundary spills (the Montara incident). The Indonesians are apparently keen to take the matter forward but restrict any offshore regulation recommendations to pollution only. The International Association of Drilling Contractors' representative was present at the meeting and argued that international regulation was unnecessary. The Legal Committee finds the definition of installation a difficulty and the fact that regulation of the offshore was not covered in the objects clause in the IMO Convention.

The IMO Assembly may add it to the work programme when they meet in November 2011 and the Legal Committee could then look at the matter in a little more detail in the Spring of 2012.

#### c) Representation at a meeting in Cartagena regarding ship recycling

The Executive Council then turned to Mr van Heule's offer to attend at a conference in October in Cartagena, Colombia on behalf of the CMI. The issue there will be the conflict between the Recycling Convention of 2010 and the Basel Convention. The difficulty in accepting the offer is that the CMI would need time to develop a position on the issue and that it would be impossible to instruct Mr van Heule on short notice simply on the basis of the information he kindly provided. It was decided that Wim Fransen would tell Mr van Heule of the decision and thank him for his kind offer. The Executive Council

considered that it would be helpful if José Vicente Guzman of the Colombian MLA would provide the Executive Council with an informal report if he is already attending the conference as a delegate.

#### d) The Albert Lilar Prize

Mr Fransen reported that there was only one candidate so far for the EUR 5,000 prize. Several books and authors were suggested to him which might be worthy of consideration.

#### e) CMI website

Stuart Hetherington reported on recent developments for the website. He encouraged use of it and to establish links. The President said that he had a number of observations to make about the website, but that he would do it by e-mail following the meeting.

#### f) Administration

The President referred to the need of reviewing the CMI's overall administration in view of the shift of many shipping activities to Asia and the possibility of a representative office in Singapore. It was recognised that there will be a need to have more Asian representation on the Executive Council in the future. The Administrator has advised that he will not stand for re-election when his present term expires in October 2012.

#### g) Future conferences and other meetings

There was discussion about possibilities for the next CMI Conference after Beijing. The President referred to an informal offer by the President of the MLA of the United States to hold the next Conference in or around the first week of May 2016 to coincide with their semi-annual spring meeting in New York. This was enthusiastically received and Mr Davis was asked to speak further with Patrick Bonner about this with a view to the possibility of a formal proposal being made to the CMI in the next few months.

The discussion then turned to suggestions that had been made to host colloquia, symposia and seminars by the MLAs of Ireland, Russia, Germany, Italy and Turkey during the period 2013 – 2015. No decisions were taken at this stage.

#### h) Miscellaneous

(i) UNIDROIT has contacted the President in relation to their proposed project on Third Party Liability for Global Navigation Satellite Services ("GNSS"). A meeting will be held on 11 November 2011 in which the position of insurers will be explored when a malfunction occurs with a GNSS. The UNIDROIT representative has asked the President if we would like to send a representative to that meeting or whether we can recommend a person in the insurance industry (possibly a member of a P & I Club) who could participate in such a meeting. The decision was made for the President to reply in which he requests further information on the project which might possibly lead to the CMI taking a decision

on this matter. He should also say that we be kept informed from time to time of the progress of this project. The decision was also made that any material received from UNIDROIT be circulated to NMLAs for their comments.

- (ii) Upon the recommendation of the Treasurer and the Administrator, Jean-Francois Peters of the MLA of Belgium will be asked to join the Constitution Committee.
- (iii) The Executive Council took note with appreciation that Måns Jacobsson and Christopher Davis participated in the IIDM Conference in Panama last February. Mr Jacobsson gave a paper on the HNS Convention and Mr Davis spoke on the CMI's role in promoting maritime law uniformity. Both spoke in Spanish which was greatly appreciated by the delegates.
- (iv) Regarding D & O insurance for the Executive Council. Mr Goemans said that he had looked into the premium for EUR 1,000,000 coverage per annum and that it was of the order of EUR 850. Mr Taylor said he had received advice from

a London broker and for GBP 1,000,000 coverage per annum the premium would be of the order of GBP 1,000. It was decided that Mr Taylor, Mr Goemans and the President would look into this whole matter and report to the Executive Council on the insurance policy to be put in place.

16. The President said that the next meeting of the Executive Council will be a virtual meeting during a week to be announced in April 2012. (Note: The President subsequently decided that the virtual meeting will be held during the week commencing 23 April 2012).

17. The Secretary General said that the next Assembly will be held in Beijing on 19 October 2012.

18. The President thereupon terminated the meeting.

Nigel Frawley  
*Secretary General*

Karl-Johan Gombrii  
*President*

**DRAFT MINUTES OF THE CMI ASSEMBLY HELD ON  
TUESDAY 27 SEPTEMBER 2011 AT THE OFFICES OF THE NORWEGIAN  
SHIPOWNERS ASSOCIATION, RÅDHUSGATEN 25, OSLO**

*(to be submitted to the next Assembly for review and approval)*

*Opening, attendance and quorum:*

The President opened the meeting and welcomed all of the delegates present. A quorum was declared and the meeting held to be properly constituted. The delegates present at the Assembly are set out at Annex "A" to these minutes, the following attending from the Executive Council:

<i>President:</i>	Karl-Johan GOMBRII
<i>Vice Presidents:</i>	Stuart HETHERINGTON
<i>Immediate Past President:</i>	Jean-Serge ROHART
<i>Councillors:</i>	Giorgio BERLINGIERI Christopher DAVIS Måns JACOBSSON Sergej LEBEDEV Dihuang SONG Andrew TAYLOR
<i>Secretary General:</i>	Nigel FRAWLEY
<i>Administrator:</i>	Wim FRANSEN
<i>Treasurer:</i>	Benoit GOEMANS
<i>Publication Editor:</i>	Francesco BERLINGIERI

1. *Adoption of Agenda*

- a) The tabled agenda was adopted.
- b) On behalf of the Credentials Committee, Benoit Goemans said that he had reviewed the list of delegates present and reminded them that there was only one vote per delegation. He advised that he had asked one delegate present to refrain from voting, pursuant to the Constitution, as his MLA was in arrears in annual subscriptions.

2. *Memorials*

The President paid tribute to old friends who had died since the last Assembly. He called for a moment of silence for the victims of the 22 July 2011 massacre in Norway and the following Titulary members: Per Erik Hedborg, Mats Hilding and Hans G. Melander of the Swedish MLA, Panayiotis Sotiropoulos of the Greek MLA, Luis Iglesias Prada and Fernando Sanchez Calero of the Spanish MLA, and Frode Ringdal of the Norwegian MLA, as well as Anatoly Kolodkin, Past President of the Russian MLA.

3. *Approval of Minutes*

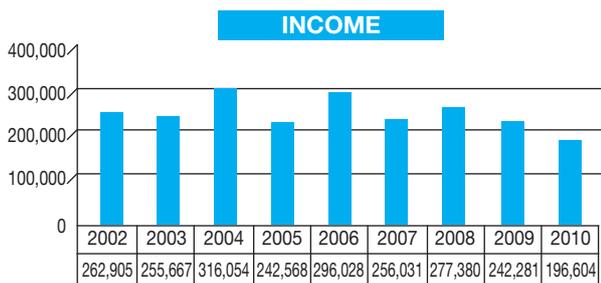
The Secretary General moved, seconded by Stuart Hetherington, for approval of the Minutes of the Assembly held in Buenos Aires on 27 October 2010. This was followed by unanimous approval. There was no business arising from the minutes.

4. *Finances*

a) *Treasurer’s report and presentation of accounts year end 31 December 2010*

The Treasurer reported as follows on the accounts of the CMI for the year ending 31 December 2010.

Income: EUR 196,604



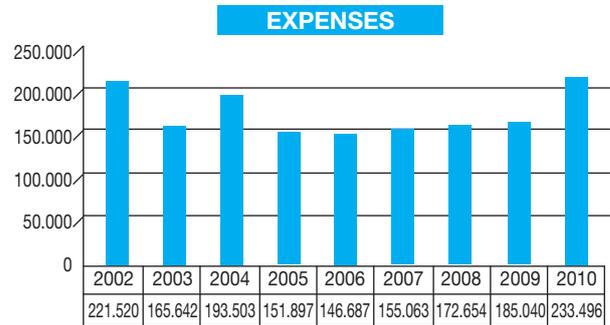
The income decreased from EUR 242,281 in 2009 to EUR 196,604 in 2010.

This decrease, the Treasurer said, originates from an increase of the provision for unpaid subscriptions, which was exceptionally high in 2009, and from lower interest revenue out of bank deposits. The 2009 interest income included interest on older investments that had benefited from the higher rates that had been available before the 2008 world-wide financial crisis. These investments came to maturity and could not be renewed at the old rates.

It should also be noted that the Titulary membership fees were reduced to zero in 2010.

The Treasurer was also pleased to report that the CMI’s share in the surplus of the Buenos Aires Colloquium came to EUR 3,239.

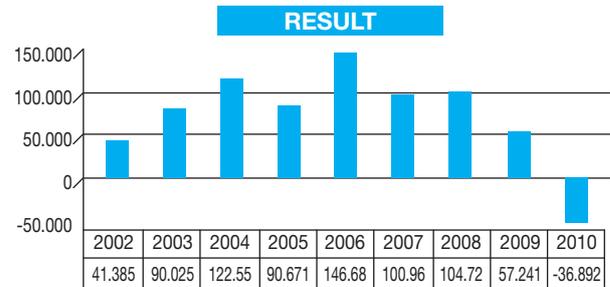
Expenditures: EUR 233,496



The expenditures increased from EUR 185,040 in 2009 to EUR 233,496 in 2010 and were the highest since 2002, the Treasurer reported. This increase originates from the doubling of the discount for timely payment (from EUR 16,956 in 2009 to EUR 33,792 in 2010) which is not an expense for the members, but lowers the membership fee disbursement.

Further, the Treasurer pointed to the increase of the Executive Councillors’ travel expenses, as a result of the remote location of the Executive Council meeting, and also the registration and other conference related expenses, which in the past happened to be underwritten or effectively borne by the Charitable Trust.

Result: deficit –EUR 36,892



The result is that in 2010 the CMI operated at a deficit, without regret, to the extent that this is mainly caused by the higher early bird discount and spending related to the CMI’s core functions (e.g. conference speakers and operating expenses).

The Treasurer also compared the various amounts to the budgets that were set in Buenos Aires and explained the differences between the budget and the effective results.

Reserves: EUR 944,023

The deficit pulled down slightly the reserves from EUR 980,915 at the closing of 2009 to EUR 944,023 at 2010 year end, out of which EUR 919,219 cash at bank.

*b) Report of the Chair of the Audit Committee and approval of the accounts for 2010*

Måns Jacobsson spoke to the written report that had been prepared by Lizabeth Burrell of the MLAUS, including reference to the high reserves and what the committee had recommended to do about them. Upon advising the delegates that the report had been endorsed by the Executive Council, it was unanimously approved by the Assembly. The President asked that the minutes reflect that Ms Burrell had done an excellent job as Chair of the internal Audit Committee. On the basis of the Treasurer's report and the report of the Audit Committee the CMI accounts for the year ending 31<sup>st</sup> December 2010 were approved.

*c) Budget for 2012 and revision of the budget for 2011*

The Treasurer discussed the Budget 2012 and the impact of the level of subscriptions on the decrease of the reserves. He recalled the general consensus to significantly reduce the reserves. The Treasurer submitted three different subscription levels :

The first estimate, "Oslo Budget 1", is based on the subscription schedule decided by the 2009 Rotterdam Assembly (set out in Annex "B"<sup>1</sup>) and assumes a 10% discount for the Members who pay within two months as from the invoice.

The "Oslo Budget 2" assumes that, similar to 2011, no subscriptions would be charged at all for 2012.

The "Oslo Budget 3" applies the Rotterdam schedule minus 40% discount and an early bird discount of 15% on the amount so reduced (so in the event of the early bird applying, the Rotterdam amount would be reduced with 49%).

Referring to those budgets as set out in the Assembly documents (item 4 c)) the Treasurer set out that the deficits for 2012 were, depending on the subscription level chosen for, anticipated to be as follows:

- "Oslo Budget 1"/Rotterdam schedule and 10% early bird: EUR 30,838
- "Oslo Budget 2"/subscription holiday again, as in 2011: EUR 207,838
- "Oslo Budget 3"/Rotterdam schedule – 40% and in addition 10% early bird and the so reduced subscription): EUR 116,182

Based on the anticipation of the reserves amounting to approximately EUR 750,000 at the year end of 2011, the reserves were anticipated to amount to the following figures at year end of 2012:

- "Oslo Budget 1": EUR 719,000;
- "Oslo Budget 2": EUR 542,000;
- "Oslo Budget 3": EUR 634,000

The President advised that the Executive Council had looked into the various options and the need for a reduction of the reserves at the right cadence. He reported that the Executive Council after due

consideration had decided to propose to the Assembly, the Budget 3, with a subscription as per the Rotterdam schedule but with a 40% reduction and 10% early bird on the amount so reduced.

The Assembly approved the "Oslo Budget 3" for 2012.

The Treasurer referred to the documents submitted as far as the revision of the budget for 2011 was concerned and the Assembly approved the revised budget for 2011.

*d) Subscriptions for 2012*

In keeping with the approved "Oslo Budget 3", the Assembly decided to fix the amount of the subscription for 2012 as per the Rotterdam schedule (see Annex "B" hereto\*) but with a 40% reduction and also to apply an early bird discount of 10% on the subscription so reduced.

*e) Report on unpaid subscriptions*

Christopher Davis reported on the status of unpaid subscriptions consistent with the written report provided to NMLAs in advance of the Assembly. Mr Davis also noted that the current amount of outstanding subscriptions (approximately EUR 34,000) was expected to drop significantly as a result of payments remitted by NMLAs immediately prior to the Assembly which had yet to be received. Additionally, the settlements of outstanding subscriptions negotiated by José Tomás Guzman with certain Latin American MLAs over the past year have now been finalized, and the Executive Council is continuing to explore the possibility of negotiating similar settlements with the remaining NMLAs that are in arrears.

The Assembly renewed its authority to the President and/or the Treasurer (or Councillors that they authorise) to negotiate the amount and payment of arrears subject to approval by the Executive Council of any such agreement.

*f) External auditors*

In keeping with the approved recommendation by the Audit Committee, the Treasurer moved, seconded by Stuart Hetherington, that Messrs de Mol, Meuldermans and Partners Bvba of Antwerp be nominated as external auditors for the 2012 accounts. This was unanimously approved.

*g) CMI Charitable Trust*

Tom Birch Reynardson, one of the Trustees, spoke about the highlights of his report to the Assembly dated 8 September 2011, and drew attention to the fact that the funds under management were valued at GBP 410,318 as at 31 August 2010, and income for the next 12 months is projected to be GBP 17,857. This sum included GBP 7,204 for Publications and Website administration. He was pleased that the Executive Council had agreed on 24 September 2011 to assume the responsibility as from next year for these items in light of the CMI's high reserves. The

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<sup>1</sup> Annex "B" omitted.

other major expenditure has been for IMLI travel and administration in the range of GBP 5,000 per year.

## 5. Members

### a) Titulary Members

The Secretary General advised the Assembly that the MLA of Canada had nominated P. Jeremy Bolger and that the MLA of Belgium had nominated Guy van Doosselaere as Titulary Members. He called upon William Sharpe of Canada and Karel Stes of Belgium to speak to these nominations. There was unanimous approval and the two nominees were then duly declared to be elected as Titulary Members with thanks and congratulations for their significant contributions to the work of the CMI.

### b) New MLAs and current prospects

The President and Giorgio Berlingieri reported that the Executive Council in a recent meeting had decided to recommend to the Assembly that the applications of the MLAs of Israel and Portugal to rejoin the CMI be accepted at EUR 500 per annum with the proviso that the figure be reviewed if and when the positive development and financial standing of the association so warrants. Dr Apolo, President of the MLA of Ecuador, extended his congratulations for this development. He is in favour of accepting more MLAs to give the CMI additional strength worldwide.

To that end, the President noted that a recently formed MLA in Indonesia seems to be ready for membership in the CMI once the membership has been broadened somewhat. Further, MLAs in India, the United Arab Emirates, Malaysia, Poland, Honduras, Ukraine and Egypt are not yet ready but the signs of their formation and joining the CMI in the future are encouraging.

The President also noted that although the Netherlands Antilles no longer exists as a country, their MLA does. The President of the MLA of the Netherlands, Taco van der Valk, said that he would look into the issue in cooperation with Benoit Goemans.

### c) Provisional members

The President reported that, as nothing had been heard from Kenya and the Democratic Republic of Congo in recent years about any activities to try to form local MLAs that can apply for membership, the Executive Council had suggested that their provisional membership be reviewed as provided for in the CMI Constitution. A formal recommendation in that regard will be submitted to a subsequent Assembly.

### d) Member Consultation Process

Christopher Davis spoke to his draft summary of Questionnaire replies and reported that the process is progressing with meetings with several MLAs having been held. More will be arranged in the forthcoming year. He said that his committee had received 17

replies to the second Questionnaire but that more are required before a proper summary can be distributed.

## 6. Elections

*Report of the Chairman of the Nominating Committee*  
Bent Nielsen, chairman of the Nominating Committee, reported that Måns Jacobsson had successfully concluded his first term as an Executive Councillor and was eligible for a second term; and that José Tomás Guzman had successfully concluded two terms as Executive Councillor but was ineligible for a third term under the Constitution. He said that he had consulted all NMLAs and his committee unanimously nominated Mr Jacobsson to carry on with a second term as an Executive Councillor, and that Jorge Radovich of Argentina be elected to the Executive Council in place of José Tomás Guzman. Mr Nielsen asked for the Assembly's approval to these two appointments, and it was unanimously given. The President thanked Mr Guzman for his excellent services to the CMI and wished him well in the future.

## 7. Work in progress

### a) Piracy

The President said that the CMI observer at IMO Legal Committee meetings, Patrick Griggs, monitors Legal Committee work on this subject and has volunteered legal assistance. He has also reminded them of the CMI guidelines on piracy and maritime crimes of violence. Dr Apolo of Ecuador suggested that the CMI join ICC as a consultative member and assist them with a joint effort. Dieter Schwampe from Germany spoke in favour of unified rules and Alexander von Ziegler of the Suisse MLA said that in certain circumstances ransoms may not be paid legally anymore and lives might ultimately be lost as a result. He suggested that CMI work actively with the IMO and other UN departments to change the existing law as required in order to eliminate this potentially dangerous situation.

### b) Fair treatment of seafarers

Giorgio Berlingieri spoke to Olivia Murray's report and said that the IWG was considering preparing and submitting a brief to the Legal Committee meeting in April 2012. Mr Berlingieri said that there would be regular updates on the CMI website and urged NMLAs to bring these developments and the CMI guidelines to the attention of competent judicial and administrative authorities in their countries.

### c) LLMC and Australian proposal at IMO to increase limits

The President referred to a note from Patrick Griggs regarding Australia's proposal to the IMO to have the LLMC 1996 limits increased under the tacit amendment provision of Article 8 of the 1996 Protocol. That is apparently the extent of their ambition and there is no associated move to amend LLMC to require shipowners to insure up to the

Article 6 limits. The issue will be on the agenda for the next IMO Legal Committee meeting in April 2012.

*d) Rotterdam Rules*

The Secretary General said that there are now 24 signatory States with Spain as the only country which has ratified the Rotterdam Rules. He then referred to the conference being held in Tokyo 21 – 22 November 2011, and the vigorous debate on the LinkedIn social network about whether the Rules would be beneficial for South American countries.

*e) Salvage*

Mr Hetherington referred to the meeting of the IWG on salvage held in London on 13 March 2011 and advised that they were currently preparing a document containing pros and cons of various proposals to send to NMLAs for discussion in March 2012 as a preparatory step towards the Beijing Conference. The chief issue will be whether the CMI should draft a Protocol amending the 1989 Convention or just to present a report to the IMO on the work carried out. It was agreed to put the topic on the agenda of the Conference in Beijing in October 2012.

*f) Judicial sales of ships – problems of enforcement*

Mr Li reported on the progress to date of the IWG including the preparation of a preliminary draft of an international instrument setting out the basic requirements for judicial sales and for the recognition of foreign judicial sales using the 1958 New York Convention on Recognition of Foreign Arbitral Awards as a model. The draft had been circulated to Titulary Members and NMLAs for comment with a request that NMLAs nominate delegates to attend the ISC meeting on the subject at Oslo during the afternoon of 27 September 2011. Several comments have been received. It is recognised that civil law countries might have difficulties with some of the present language of the draft. Mr Li said that more replies were needed to their questionnaire. He said that the ISC plan is to circulate their work product by the end of 2011 for comment and hopefully to submit a draft to the Beijing Conference, which was approved

*g) Implementation and interpretation of international conventions*

Francesco Berlingieri referred to a Note he had prepared and which would be circulated to NMLAs soon. The Note explains the issues of implementation and reservations and the suggestion of preparing guidelines on the information that States should provide to the Depository of a specific Convention at the time of its ratification or acceptance. He said that a working group had been established by the Executive Council consisting of himself and Professor Antapassis of Greece with the mandate to consider the responses received and report to the Executive Council with recommendations on future actions to be taken.

*b) Marine insurance*

Dieter Schwampe spoke to the report of his IWG which shows they are concentrating on mandatory insurance regulations in international conventions at the present time. He urged MLAs to respond to the August 2010 Questionnaire as more replies are needed in order to draw proper conclusions on the development of guidelines. To date only 11 replies have been received.

*i) Cross border insolvencies*

Christopher Davis referred to the bankruptcies of Korea Line and Beluga Line as proof that there is a need for work in this area. He said that his IWG is finalising a Questionnaire and the Executive Council is recruiting civil law practitioners or academics to join them. They have asked for this subject to be on the programme at the Beijing Conference. He also said he hoped there would be a Norwegian banker and an Asian speaker on the panel at Beijing.

*j) Limitation of liability*

The Secretary General reported on behalf of Gregory Timagenis who was unable to be present. A meeting of the ISC was held in London 25 – 26 March 2010 and informally in Buenos Aires in October 2010. Further editing of their list of Questions and Issues has been prepared relating to limitation of liability, and their Commentary on Procedural Rules. The Executive Council has resolved to ask Mr Timagenis to invite a further round of comments so that they may complete the List and Commentary by 31 March 2012, if possible, and to submit them to the Executive Council for a decision on any further action.

*k) Ratification of the Conventions on Arrest 1999, and Liens and Mortgages 1993*

Giorgio Berlingieri reported that even though the 1999 Arrest Convention entered into force on 14 September 2011, it is still appropriate to investigate why it and the 1993 Liens and Mortgages Convention enjoy so relatively little success. He has asked his working group members, John Hare and Ignacio Arroyo, to assist him in preparing two Questionnaires for circulation to NMLAs.

*l) Arctic/Antarctic issues*

The Secretary General said that he had a meeting with the CMI ad hoc working group in July 2011 to identify and recommend matters for further study by the CMI. The working group decided that they should recommend uncontroversial matters and only those that applied at both the Arctic Ocean and the Southern Ocean. The working group identified the Collision Regulations, Loadline Convention, International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, the International Convention on Maritime Search and Rescue 1979, Arctic Marine Oil Pollution Preparedness and Response and MARPOL 73-78. Short summaries giving an explanation of the work that could be done were tabled with Mr Frawley's report. He then said that the Executive Council at its

meeting on 25 September 2011 had approved the work programme and authorised the formation of an International Working Group which is to include in its mandate a review of private international law maritime Conventions with respect to their applicability to the Polar regions.

#### *8. Publications*

There was no report.

#### *9. Website*

Stuart Hetherington reported that the new website is continuously being worked on in order to improve it further. He invited submissions from NMLAs for postings and urged that it be used.

#### *10. Next Assembly*

The President said that the next Assembly will be held in Beijing on Friday 19 October 2012, which was approved.

#### *11. CMI representative office in Singapore*

The President said that the Executive Council was studying the possibility of establishing a CMI representative office for Asia, including India, on a three year trial basis. The present thinking is that, as a shipping hub for Asia, Singapore as an important and well placed shipping hub for Asia, would be a good choice. Lawrence Teh of the Singapore MLA has offered to assist. The President said that there is a need in the region to work for unification of maritime law and a need to recruit further member associations and that a representative office would perform a platform for this. The President asked the Assembly if they would approve the project. This was unanimously given subject to the Executive Council's approvals as the matter moves forward.

#### *12. Meetings of the IMO Legal Committee and IOPC Funds*

The Secretary General reported that Richard Shaw had attended the Legal Committee meeting in London in April 2011, the IOPC Funds meeting in March 2011 in London and the IOPC Funds meeting in Marrakesh, Morocco in July 2011. Mr Shaw

attended those meetings as the CMI Observer delegate and his reports may be found in CMI News Letter No. 1 – 2 – January/August 2011.

#### *13. York Antwerp Rules 2004 – Rate of interest for 2012*

Bent Nielsen spoke to his written report and recommended that the rate of interest to be applied under Rule XXI of the York Antwerp Rules 2004 should be 3% for the 2012 year. Hence, this rate of interest should be applied to expenditure, sacrifices and allowances in General Average during the period from 1 January to 31 December 2012. It was so decided.

#### *14. CMI Conference in Beijing 14 – 19 October 2012 and Shanghai Add-On 20 – 22 October 2012*

The Secretary General said that he had been in correspondence with the Chinese Organising Committee and that matters were progressing well. He said that he and the President and Stuart Hetherington would be meeting with Dihuang Song and Henry Li, both members of the Chinese Organising Committee, that evening to discuss finer details. He said that he would be reporting to all NMLAs in the near future of the arrangements to date. The Executive Council was authorised to decide on the detailed contents of the agenda for the Conference.

#### *15. Other business*

There was no other business.

#### *16. Termination*

The President thanked the Norwegian MLA for the very successful seminar held at the premises of Det Norske Veritas, and also thanked Det Norske Veritas for giving CMI delegates a splendid tour of their facilities with interesting talks by many employees. He also thanked the Norwegian Shipowners Association and the Nordisk Defence Club/Nordisk Legal Services for the use of their facilities for meetings. He thereupon terminated the meeting.

Nigel Frawley  
*Secretary General*

Karl-Johan Gombrii  
*President*

## ANNEX A

### ATTENDANCE LIST

<i>National Associations</i>	<i>Delegates</i>	<i>Observers</i>
<i>Argentina</i>	JORGE M. RADOVICH	
<i>Australia &amp; New Zealand</i>	SARAH C. DERRINGTON STUART HETHERINGTON	
<i>Belgium</i>	WIN FRANSEN BENOIT GOEMANS KAREL STES	
<i>Brazil</i>	LUIZ LEONARDO GOULART	
<i>Canada</i>	PETER CULLEN NIGEL FRAWLEY WILLIAM M. SHARPE	
<i>China</i>	HENRY LI DIHUANG SON	
<i>Croatia</i>	IGOR VIO	
<i>Denmark</i>	BENT NIELSEN HENRIK THAL JANTZEN	
<i>Dominican Republic</i>	MARIE LINNETTE GARCIA CAMPOS	
<i>Ecuador</i>	JOSÉ MODESTO APOLO	
<i>France</i>	LARS LEWIS JEAN-SERGE ROHART	
<i>Germany</i>	JAN-THIESS HIETMANN KLAUS RAMMING DIETER SCHWAMPE	LIEF BLEYEN* THOMAS WANCKEL*
<i>Greece</i>	GEORGE TSAKONAS	
<i>Italy</i>	FRANCESCO BERLINGIERI GIORGIO BERLINGIERI ANDREA BERLINGIERI	
<i>Japan</i>	TETSURO NAKAMURA	
<i>Korea, Rep. of</i>	JINKWON KIM	
<i>Malta</i>	IVAN VELLA	





<i>National Associations</i>	<i>Delegates</i>	<i>Observers</i>
<i>Netherlands</i>	LOTTE SCHAT TACO VAN DER VALK	
<i>Nigeria</i>	LOUIS MBANEFO	
<i>Norway</i>	KARL-JOHAN GOMBRII	
<i>Russia</i>	SERGEI LEBEDEV	NATALIA MALASHKINA
<i>Singapore</i>	LAWRENCE TEH	
<i>Slovenia</i>	MITJA GRBEC BORIS JERMAN	
<i>Sweden</i>	LARS BOMAN MANS JACOBSSON ERIK LINNARSSON	
<i>Switzerland</i>	ALEXANDER VON ZIEGLER	
<i>Turkey</i>	SAMIM ÜNAN	
<i>United Kingdom</i>	TOM BIRCH REYNARDSON JONATHAN LUX ANDREW TAYLOR	
<i>United States</i>	PATRICK BONNER CHRISTOPHER DAVIS ROBERT PARRISH	GEORGE FOWLER* WARREN MARWEDEL* FRANCIS NOLAN* EDWARD POWERS* KATHARINA POWERS*

\* Since there can be maximum three delegates per country, the additional ones (from Germany and the U.S.A.) have been regarded as observers.

## NEWS FROM THE NATIONAL ASSOCIATIONS

### NEWS FROM THE BELGIAN MARITIME LAW ASSOCIATION

On 10 May 2012, the Belgian Maritime Law Association will dedicate a one day conference to a Critical Retrospect of 60 Years Arrest Convention. Details of this event will shortly become available on the Association's website: [www.bvz-abdm.be](http://www.bvz-abdm.be).

## NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

### NEWS FROM IOPC FUND

#### MEETINGS OF GOVERNING BODIES – 24<sup>th</sup> to 28<sup>th</sup> October 2011

The Autumn 2011 meetings of the IOPC Funds governing Bodies took place at the IMO Building during the week of 24<sup>th</sup> to 28<sup>th</sup> October. By far the most significant event was the election of a new Director in place of Mr Willem Oosterveen of Netherlands, who, due to the ill health, did not seek re-election at the expiry of his term of office on 31<sup>st</sup> October 2011. Two candidates were proposed by national delegations, namely Mr Jose Maura, the Head of Claims and Acting Director for the past year, and M. Frederic Hebert, Director of REMPEC. Mr Maura was duly elected, and formally took up his post on 1<sup>st</sup> November, although he has been discharging the duties of Director in an acting role since Mr Oosterveen was taken ill in August 2010.

Many generous tributes were paid to Mr Oosterveen, who has discharged his duties with great skill and diplomacy for the last four years, since he took over from Mr Mans Jacobsson.

The business of the meetings included a review of current cases, the adoption of the last year's accounts, and reports from the advisory bodies including the Audit Committee and the Investment Advisory Body. Full details of these are set out in the Reports of the Meetings which are accessible on the IOPC Funds' website, which has been recently upgraded and is now more user-friendly.<sup>2</sup> This report will therefore concentrate on the matters of general interest.

#### *Current cases*

*Nissos Amorgos* and *Plate Princess*. These two spills occurred in Venezuela in February and May 1997 respectively, and the claims are time-barred in accordance with the express terms of Article VIII of the 1969 CLC, and Article 6 of the 1971 Fund Convention. The amounts spilled were relatively small, particularly in the case of the *Plate Princess*, but the sums awarded by the Venezuelan Courts are very large, and appear to bear no relation to the size of the spills. In the case of the *Nissos Amorgos*, claims totalling US\$24,397,612 have been settled and paid,

but further claims totalling US\$ 90 million are being pursued in the Venezuelan Courts. The 1971 Fund has never been made a party to the legal proceedings in Venezuela in that case.

Concerns were expressed by several delegations concerning the apparent "impasse" in which the 1971 Fund found itself in both these cases. Some delegations stated that the matter had been decided at the April 2011 meeting in Morocco<sup>3</sup>, namely that the claims were time-barred and that there had been no "due process" in Venezuela, and that no further payment should be made. In the meantime, it was agreed that the legal proceedings in Venezuela had not reached a final stage, and that the matter would be reviewed at the next meeting.

*Erica* (Dec 1999) This case has now been settled with all the valid claimants, and the Director reported on a proposed global settlement negotiated with the French Government and Total together with the Steamship Mutual P and I Club. The detailed terms, set out in document IOPC/OCT11/3/5/1, were approved by the Executive Committee of the 1992 Fund.

*Hebei Spirit* (Dec 2007) This case is the largest ever handled by the IOPC Fund, both as to the total amount of the claims (£ 187 million) and the total number of claimants (127,000). Good progress is being made with the assessment of each outstanding claim, but considerable difficulties have been encountered with the claims of subsistence fishermen who are not in a position to produce documents to justify their claims. The Fund has been authorised by the Executive Council to pay 35% of all proven claims, but at the last meeting it was reported that an agreement was nearly achieved with the Korean Government which would enable the level of payments to be increased to 100%.

At the October 2011 meeting the Director announced that the Korean Government had decided not to proceed with that agreement, and that it would settle all outstanding claims at 100% of the amount assessed

<sup>2</sup> At <http://documentservices.iopcfund.org>.

<sup>3</sup> See our report of this meeting in News Letter 2011 n° 1-2 pages 9-10.

by the Funds Experts as being justified and then claim back an appropriate proportion from the Fund. Several delegations expressed disappointment at this development, which did not appear to be compatible with the duty of the Fund to ensure that all victims were entitled to prompt and fair compensation. The Director explained that out of some 90,000 hand-gatherers, 30,000 had been interviewed and their claims assessed, 30,000 were in course of being assessed, and the remaining 30,000 would probably not qualify for compensation.

He also underlined that appropriately qualified surveyors were hard to find in Korea, and almost all of those available had been retained either by the Fund or the Korean Limitation Court. At the conclusion of the debate there was a clear consensus to adopt a cautious approach and to maintain the level of payments at 35% for the present.

#### *Report of the Investment Advisory Committee*

Previous reports of this committee have not provided exciting reading to the lay reader, but in the confused state of the financial markets prevailing at the time of the meetings it became clear that a cautious approach to the placing of the Funds' substantial cash deposits was fully justified. This prudence was endorsed by the Funds' Audit Body, which oversees the operations of the Funds generally, and was approved by the Assemblies of the respective Funds.

#### *Definition of the term "Ship" in the CLC and Fund Conventions*

For some years this subject has come up in the debates of the Funds' Governing Bodies, with some dissatisfaction as to the application of the wording in Article 1(1) of the 1992 Civil Liability Convention, which applies equally to the 1992 Fund Convention. The relevant paragraph reads:

"Ship" means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

At the request of the 1992 Fund Assembly in October 2010, the Secretariat was asked to obtain a legal opinion on the issues raised by this definition, particularly in the light of the development of craft called Floating Storage Units (FSU's) and Floating Production, Storage and Offloading Units (FPSO's), and the growing practice of laden tankers remaining at anchor for prolonged periods in the course of their voyages.

A written Opinion of Professor Vaughan Lowe QC, an eminent counsel in the fields of Public and Private International Law, was obtained and presented to the meetings.<sup>4</sup>

It is a lengthy document, but well repays careful study. In summary the Opinion concludes that FSU's are not included in the definition of "ship" under article 1.1 of the 1992 CLC, and that oil on board "mother vessels" performing floating storage should not be regarded as "received" contributing oil for the purpose of Article 10 of the 1992 Fund Convention in the state in whose waters they are anchored. These conclusions are consistent with the policy positions adopted by the governing bodies of the IOPC Funds in past years.

The Assembly, after an interesting debate, generally endorsed the view of the Director, supported by Prof. Lowe's opinion, that a period of one year was probably a reasonable time period for a vessel to remain at anchor in floating storage mode before it was considered as no longer performing "carriage" of its oil cargo. This is significant, because from that point on the vessel is regarded as "permanently or semi-permanently" at anchor for the purposes of calculating contributing oil under Article 10 of the 1992 Fund Convention, and thus not covered by the compensation regime provided by the CLC and Fund Conventions. However the Chairman in his summing up reminded the Assembly that this was not a "bright line rule" and that it could be reviewed in the light of particular circumstances. As Professor Lowe himself has observed, it raises a rebuttable presumption that the ship in question "had ceased to be a navigating instrument and become a storage facility."

#### *Other matters*

Meetings of the IOPC Funds provide, apart from the discussions summarised above, an opportunity for work to take place in the margins of the meetings by small working groups on particular problem areas. There was no formal meeting of the Sixth Intersessional Working Group concerned with the funding of interim payments and the handling of large numbers of small claims. However some good work was done by a Consultation Group (in which the CMI Observer Delegation took an active part) in clarifying existing practices of the Funds' Secretariat in concert with the P and I Club concerned in ensuring that the prime duty of the Funds to make prompt payment of justified claims was discharged by the making of interim payments where full payment was not possible.

Richard Shaw\*

<sup>4</sup> Document IOPC/OCT11/4/4.

\* CMI Observer Delegate.

## UNIFORMITY IN MARITIME LAW – DEVELOPMENTS

### TRANS-BOUNDARY OIL POLLUTION DAMAGE ARISING FROM EXPLORATION AND EXPLOITATION OF OFFSHORE OIL. DO WE NEED AN INTERNATIONAL COMPENSATION CONVENTION?

The explosion and fire aboard the rig “*Deepwater Horizon*” in the Gulf of Mexico in April 2010, leading to the death of 11 workers, can have left no government in any doubt that offshore drilling for oil is a dangerous activity. The publicity which this incident engendered brought those dangers to a world-wide audience. However few among that audience were aware of another serious incident which had taken place in the Timor Sea between Indonesia and Australia in August 2009, when a blow-out from the Montara well, then being drilled by the rig “*West Atlas*” for a Thai-based oil exploration company, caused a substantial leak of crude oil. This rig was located in the Australian Exclusive Economic Zone, some 135 miles north west of the nearest coastline of the Australian mainland and a similar distance from the nearest coast of Indonesia.

Prompt action by the Australian authorities prevented any of the leaking oil from coming ashore on the coast of Australia, but the Government of Indonesia is reported<sup>5</sup> to have claimed \$2.5 billion for pollution damage that was suffered in its territory. This incident has highlighted the fact that there is no international convention in force governing compensation for oil pollution damage in such circumstances. The absence of such a convention has not prevented substantial pollution damage claims from being made in the United States as a result of the “*Deepwater Horizon*” incident, but fortunately for the victims of that incident, the operator of the well being drilled was BP, one of the world’s largest oil companies, which has undertaken to settle the claims of the victims in the United States.

Claims in respect of trans-boundary damage have been filed in the US Federal Court against BP and other defendants by three States of Mexico, claiming damages to fisheries and tourism, but those claims have yet to be heard.

In the absence of an international convention

governing liability for such claims, it remains an open question what is the legal basis for such claims, and this was the subject matter of a conference held in Bali, Indonesia on 21<sup>st</sup> to 23<sup>rd</sup> September 2011.

The conference was sponsored by the Government of Indonesia, and was attended by representatives of many states in South East Asia, including Australia, Malaysia, Philippines, Singapore, and Thailand, together with representatives of Egypt and Norway and several non-governmental organisations involved in offshore activity.

#### *Action at the International Maritime Organization*

In 2010 the delegation of Indonesia raised the subject of a possible convention in the Maritime Safety Committee of the IMO, but that committee suggested that the proper forum in which this issue should be raised was the Legal Committee. The matter therefore came up in the Legal Committee at its 98<sup>th</sup> session in April 2011, and a useful summary of the relevant international instruments, prepared by the IMO Secretariat, was laid before that meeting<sup>6</sup>.

The majority of delegations who took the floor at this meeting spoke in favour of further work on this subject, although a small number expressed doubts as to whether there was a sufficient consensus to achieve a viable international convention. Those in favour of a convention sought support in the express terms of Article 214 of UNCLOS<sup>7</sup>.

The Comité Maritime International (CMI) Working Group on Offshore Craft has been inactive since it presented its report to the IMO Legal Committee in 1998<sup>8</sup>, but the CMI Delegate offered to place the fruits of the CMI’s work on this subject at the disposal of the informal correspondence group led by Indonesia.

However a decision of the IMO Council was required to put this topic on the work programme of the Legal Committee, and until that has been done the discussions must remain “informal”. This question was

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<sup>5</sup> Presentation of Youna Lyons to the Bali Conference.

<sup>6</sup> Document LEG98/13.

<sup>7</sup> States shall enforce their laws and regulations adopted in accordance with article 208 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction.

<sup>8</sup> Document LEG78/10.

put to the Council of the IMO at its meeting in June 2011 when, to the evident disappointment of the Secretary General and the Chairman of the Legal Committee, the Council declined to approve this work, on the grounds that it was outside the objects of the IMO according to its governing convention. The matter was therefore referred back to the Legal Committee and will be considered at its meeting in April 2012<sup>9</sup>.

The fact that the IMO was set up to deal primarily with merchant shipping issues has not prevented it from tackling important matters in the field of offshore activity in the past. The MODU Code, the 1988 Protocol to the SUA Convention dealing with the Suppression of Unlawful Acts against Fixed Platforms, and the 2005 Protocol extending the SUA Convention and Protocol are conspicuous examples. The question was raised during the debate at LEG97 whether this lay within the competence of the IMO, but the Secretary General assured delegates that there was no UN Agency with a better authority for tackling these matters.

#### *Principal Matters Discussed at the Bali Conference*

##### *1. Damage caused in Indonesia by the Montara spill*

This subject was approached delicately, since it emerged that negotiations are still continuing between the government of Indonesia and the company which owns and operates the Montara field. A paper was presented by Ms Masnellyarti Hilman, Deputy Minister for Hazardous Substances, Hazardous Waste and Solid Waste Management, Ministry of Environment of Indonesia, detailing the damage said to have been suffered by the coastal communities of the adjacent Indonesian Islands as a result of the spilt oil coming ashore. A complex formula was presented which converted this damage into monetary terms.

This raised an interesting initial question, whether a claim based on a mathematical model was enforceable in the circumstances of the Montara incident. In the discussions following Ms Hilman's presentation the comparison was drawn with the "Methodika" calculations advanced in old cases against the International Oil Pollution Compensation Fund (IOPCF) by claimants in Russia.

In the discussions which followed Ms Masnellyarti Hilman's presentation, it was pointed out that in the case of oil pollution from tankers, the definition of "pollution damage" in the CLC Convention<sup>10</sup> was

amended in 1992 to make explicit the rule that "compensation for impairment of the environment other than loss of profit from such impairment shall be limited to reasonable measures of reinstatement". In the case of the "Volgoneft 139", which sank in a storm in the strait between the Black Sea and the Sea of Azov in November 2007, a claim for environmental damage based on the old "Methodika" was put forward by the Ministry of Natural Resources in legal proceedings in Russia, and expressly rejected<sup>11</sup>.

These principles do not, of course, apply to pollution by oil from offshore oil drilling activity, but if a future convention governing this type of pollution is to be based on the principles already adopted internationally in the field of oil pollution from ships, then it is unlikely that claims based on a mathematical model will be recoverable.

##### *2. Environmental, socio, and economic aspects of Marine Pollution from Offshore activities*

Ms Youna Lyons, of the Centre for International Law at the National University of Singapore delivered a paper detailing the potential risks of pollution damage, with particular reference to the South East Asian Region. She highlighted the fact that the water temperature in this region is significantly higher than, for example, the North Sea, and that this would cause different rates of dispersion of spilt oil. Likewise the variation of pour point and viscosity of the leaking oil would produce differing levels of pollution damage. She also told the conference that a significant proportion of the world's mangroves are in SE Asia, and that these are particularly vulnerable to oil pollution damage.

Ms Lyons urged delegates to reflect on the real risk of another incident similar to the Montara spill, as drilling activities extend into ever-deeper waters, with the higher levels of danger involved. She also reminded them that there are already, according to a survey which she has conducted recently, 490 platforms in Indonesian waters, 348 in Malaysia, and 265 in Thailand.

She concluded by impressing upon the conference the potential risks of such a spill to coastal populations, commercial fisheries, marine and coastal tourism, coastal mangroves, migratory species and biodiversity, and by urging delegates to plan ahead, not only in preparing response measures to deal with such a spill, but also to develop international law provisions to ensure fair and prompt compensation.

##### *3. An overview of the legal measures taken in the*

<sup>9</sup> No meeting of the Legal Committee is scheduled for Autumn 2011.

<sup>10</sup> Article 1(6)(a)

<sup>11</sup> IOPC Fund Annual Report 2008 pages 123-125, and IOPC Fund Claims Manual pages 30-32.

past to provide for compensation for transboundary oil pollution from Offshore activities was given by Richard Shaw, of the University of Southampton, and former Chair of the Comité Maritime International Sub-Committee on Offshore Units.

He outlined the evolution of the compensation regime applicable to oil spills from tankers in the 1969 Civil Liability Compensation Convention (“CLC”) and the 1971 IOPC Fund Convention, both of which were updated in 1992, and extended by the 2003 Supplementary Fund Protocol. Comparable Conventions were adopted covering dangerous chemicals (“HNS”) in 1996 and Bunker oil in 2001. An attempt was made to draft an international convention covering liability and compensation for pollution damage caused by offshore exploration and exploitation (the “CLEE” convention) but although this was adopted by a conference in London in 1976, it has never achieved the necessary ratifications for entry into force. This is probably because it contains alternative options for limited and unlimited liability. Another reason is the existence of a private agreement between certain European Governments and the major participants in their offshore industries. This agreement called “OPOL” provides for compensation, now up to a maximum of US\$250 million<sup>12</sup>, to be payable by the operator of the rig causing pollution damage, with payment guaranteed by the other participating companies. Of that sum, \$125 million is payable for remedial measures and \$125 million for pollution damage. The agreement only applies to the states the governments of which are parties to it, all of whom are in Europe, and does not apply in the Baltic or Mediterranean Seas.<sup>13</sup>

Within its limits however, OPOL has worked well to date, and participating states now require applicants for offshore exploration, exploitation and pipe-laying licenses to be a party to OPOL.

Mr Shaw outlined briefly the work of the CMI Committee which he had chaired and which had presented a detailed report to the Legal Committee IMO in 1998.<sup>14</sup>

This report was noted by the Legal Committee, but it declined to put this topic on its work programme, although at the time no objection was raised that offshore craft did not lie within the jurisdiction of the IMO.

The “*Deepwater Horizon*” incident in the Gulf of Mexico in April 2010 has undoubtedly raised

awareness in governmental circles of the potential dangers of offshore exploration in ever-deeper waters, and, combined with the “*Montara*” incident a year earlier, has added impetus to debates such as this Conference.

Mr Shaw summarised the discussions in IMO Legal Committee set out above, and the somewhat unexpected decision by the Council declining to adopt the topic on the work programme. Until this apparent impasse has been resolved, it is difficult to see how the IMO can take the matter further.

He urged the delegates present at the conference to make a concerted effort to ensure that the representatives of the states of SE Asia, and their friends elsewhere, should support this initiative, and to convince the members of the Council that there is no UN body more appropriate to deal with oil pollution from offshore activity.

Both the government-appointed Commissions of Enquiry into the *Montara* and “*Deepwater Horizon*” incidents have commented that there was a need for concerted international regulation of the offshore drilling industry, and this was clearly a challenge to states to respond. The road would not be an easy one, but Mr Shaw urged those present to support the Indonesian initiative, and to put in the hard work to bring the proposed international instrument into being, and into force.

4. The perspective from the United States was provided by Professor Guenther Handl, Professor of International Law at Tulane University School of Law. Professor Handl told the Conference that international law in the field of compensation for pollution damage caused by offshore drilling activity is relatively undeveloped, and that the need for a coherent international regime governing offshore activity was becoming more apparent. “An accident anywhere is an accident everywhere.” He considered that there were precedents establishing state liability for compensation in such circumstances, but that in most cases the question of liability was covered by the terms of the licensing agreement between the operator and the coastal state. This left open the position where pollution damage is caused in a neighbouring state to the state in whose territory or EEZ the drilling took place.

The proposal for a new convention raised several complex questions which he then reviewed in detail. Those included the notion of “damage compensable”

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<sup>12</sup> As amended 1<sup>st</sup> October 2010. See [www.opol.org.uk](http://www.opol.org.uk)

<sup>13</sup> Comparable private agreements such as TOVALOP and CRISTAL served as interim arrangements pending the entry into force of the CLC and Fund Conventions.

<sup>14</sup> Document LEG 78/10.

as extending to pure economic loss liberally interpreted (pointing inter alia to the abandonment of the geographic proximity requirement in the Gulf Coast Claims Facility proceedings following the “*Deepwater Horizon*” spill) and to pure environmental loss. These would raise possible difficulties with insurance coverage (limited or unlimited); subsidiary state liability (the state’s role as insurer of last resort); and claims processing.

In Professor Handl’s view however there was room for residual legal liability on the state in whose territory or EEZ the accident occurred. The decision in the advisory opinion of ITLOS dated 1<sup>st</sup> February 2011 rejected such liability as a principle of present general international law, but clearly left the door open for the law to develop in this direction. He emphasised that the state was likely to be an insurer of last resort in cases where the damages suffered exceeded either the available insurance coverage of the operator, or indeed the legal limit of liability if applicable.

He told the Conference that the judge in the “*Deepwater Horizon*” case in New Orleans had held that OPA 90 had not displaced the principle of General Maritime Law of a right to claim damages for a wrongful act. The Judge had also held that the “*Deepwater Horizon*” was a “ship” at all material times for the purpose of maritime law.

Professor Handl also referred to the UNEP Guidelines on Environmental Damage<sup>15</sup>, in the drafting of which he had been actively involved, which include a duty on states to develop methods of compensation for environmental damage, and urged that this should be part of a global offshore regime. He also drew attention to the fact that in the UNEP Guidelines states have already accepted internationally the compensability of pure environmental loss and the principle of “unlimited liability-but limited financial guarantee”.

In the discussions following Professor Handl’s speech, Mr Shaw pointed out that in three recent cases<sup>16</sup> of oil pollution from ships, the government of the polluted state had been obliged to pay damages to victims to the extent that their legitimate claims exceeded the amounts available under the CLC and IOPC Fund regimes.

5. Mr Bebeb Djundjungan, Director for Treaties on Economic, Socio and Cultural Affairs, Ministry of Foreign Affairs, Republic of Indonesia, delivered a

paper on the On-going Discussions at the IMO relating to Transboundary Oil Pollution Damage arising from Offshore Oil Exploration and Exploitation Activity.

He started by emphasising the clear obligations on states to prevent, reduce and control pollution of the marine environment from sea-bed activities under their jurisdiction – articles 192 and 208 of UNCLOS, and the obligation on states to adopt the appropriate laws – article 214. UNCLOS does not establish or provide an international liability and compensation regime, but rather imposes a legal obligation on states to establish such a regime. “It is,” he said, “clear that we must do something.”

Mr Djundjungan cited a range of measures, including OPRC 1990, MARPOL 73/78, the 1988 and 2005 SUA Protocols and the MODU Code as examples of treaties, recommendations and resolutions concerning fixed and floating offshore platforms as concrete examples of positive action by IMO in this field.

Despite these, the Council of IMO at its 106<sup>th</sup> meeting “requested the Legal Committee to re-examine, at its next session, the proposed revision of Strategic Direction 7.2, concerning liability and compensation issues connected with transboundary pollution damage resulting from offshore oil exploration and exploitation activities, under the “any other business” item of its agenda; and to report to the Council accordingly.”

It was therefore essential to include relevant stakeholders in the discussion, including the industry and oil producers. He noted that an initiative had been launched by Russia at G-20 proposing global action to protect the marine environment from oil spills, which should emphasise to IMO the importance of this topic. It is necessary for us all to keep working towards the discussion at LEG 98 next April.

6. Justice Steven Rares, Judge of the Federal Court of Australia, delivered a paper on the essential elements which the proposed international convention should contain. It was very important, he said, to identify the right people to make the target for liability<sup>17</sup>, and to ensure that limits were imposed which were the maximum amounts commercially viable.

Limitation of liability was, he said, a fact of business life, and was essential in order to obtain the support of the insurance community to the proposed

<sup>15</sup> Guidelines for the Development of National Legislation on Environmental Liability, Response Action and Compensation for Damage caused by Activities Dangerous to the Environment.

<sup>16</sup> “*Erika*”, “*Prestige*” and “*Hebei Spirit*”.

<sup>17</sup> In this context he suggested that the 2001 Bunker Pollution Convention provided a useful model.

instrument. In most cases involving merchant ships this was the P and I Clubs, but in the case of offshore craft the markets are probably different.

States have a duty to exercise regulatory control over offshore operators, and should be prepared to accept legal liability for breach of that duty. The instrument should also contain clear provisions relating to jurisdiction governing the assessment and enforcement of claims, with a requirement for the liability insurers to submit to the same jurisdiction. The states' rights and obligations should be governed by, and limited, by, the regime.

It was important, he said, to balance the desirability of encouraging entrepreneurs to undertake the risks involved in offshore exploration with imposing liabilities on them to cover the consequences if something goes wrong. "We all live in one world" he concluded, "and inaction is not an option."

### *Conclusions*

Following the presentations by the panellists, there were many useful contributions from the delegates present, governmental and non-governmental, and, as in all such conferences, interesting conversations in the margins. The delegate of Norway, supported by the representative of the International Association of Oil and Gas Producers, argued that there was no need for an international convention on this subject, since oil exploration is essentially local, and subject to local law. He said that the Norwegian legislation on offshore exploration (the Petroleum Act) provides for strict and unlimited liability on the operator, and contains very extensive rules regarding environmental impact. This did not seem to have deterred the major players from undertaking oil exploration in Norwegian Waters.

Norway was, he said, committed to high safety standards, but it sees oil exploration and exploitation as different from shipping, and more logically suited to national jurisdiction. He acknowledged, however, that without common safety standards, there might be a problem in getting countries to pay for high safety cover in parts of the world where standards are not so high. He concluded that Norway could agree to bring this subject to the IMO to start a discussion. That is clearly the first and important step. There is, as the Secretary General of IMO has stated more than once, no more logical forum for this subject, and it was agreed by all present that the time available between the conference and the next meeting of the IMO Legal Committee in April 2012 must be utilised

to mobilise support internationally for the adoption of this subject on the IMO Work Programme.

### *Comment*

Is there a "compelling need" for this work? The pointers in favour of a positive answer are several, but most notably the comments by the Commissions of Enquiry on both the "Montara" and "Deepwater Horizon" accidents that the offshore industry is in need of better regulation, particularly in the fields of safety and risk management.

While the industry operators would undoubtedly prefer to be left to manage their operations undisturbed by government inspectors, the commissioners' views are that further regulation is desirable in the interests of the safety of those who work offshore and of the marine environment generally. There is ample justification within the provisions of UNCLOS for such an initiative. Surely it is preferable for there to be in place an international instrument setting minimum standards of best practice which can apply wherever in the world the exploration and exploitation is taking place. Close involvement of the key actors in the offshore industry would be an essential element, and the existence of this initiative should not prove to be a deterrent to them, as the Norwegian experience has shown.

Whether there is such a need for a compensation scheme for the victims of oil pollution from offshore activity is more debateable. Major incidents in this field are fortunately few, and to date the victims claims have generally been met. The IOPC Fund and the CLC Convention which underlies it, have provided a remarkable success story in providing a scheme which has as its principal objective the channelling of money to the genuine victims of oil pollution accidents. The first point of contact for this scheme is of course the P and I Clubs, who provide liability insurance to their ship-owner members on a mutual basis. The IOPC Fund only becomes involved if the damages are large enough to exceed the agreed threshold of the CLC Convention.

The system is astonishingly effective, and all the more astonishing when it is recognised that the Fund is run from an office in London with a staff of 35, despite the enormous sums of money which they handle and the huge numbers of claims which are involved. The continuing success of OPOL has shown that a similarly small-scale operation can meet the needs for compensation for the victims of pollution accidents arising from offshore operations in Europe.

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<sup>18</sup> Comparable problems have been encountered with the insurance requirements in the CLC and Bunkers Conventions.

Whether this scheme could be extended, or adapted, to provide prompt and fair compensation for such accidents on a world-wide basis is a much more difficult question. The 16 companies which are members of OPOL guarantee each others' potential liabilities for pollution damage and clean-up costs. How a new member of this agreement satisfies the existing members that it has sufficient financial strength to take on this obligation is one of the mysteries not revealed to the public. To apply comparable criteria on a world-wide basis would undoubtedly pose problems of financial and diplomatic delicacy<sup>18</sup>.

The insurance arrangements underlying the offshore industry are undoubtedly different from those covering liability for oil pollution from ships, and may

well be placed in different markets. Active participation by the insurers involved would be a prerequisite to any project to develop an international convention on offshore activity, as much as that of the offshore operators themselves.

Yet none of this is impossible. If the governments of states which have active offshore industries perceive the need to provide their citizens with the knowledge that those of them who suffer pollution damage from offshore activity, whether in their own waters or those of neighbouring states, will receive prompt and fair compensation, then surely the IMO is by far the best forum for such an initiative.

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